

Appeal from decision of California State Office, Bureau of Land Management, declaring mining claim abandoned and void. CA MC 58206.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim prior to Dec. 31 of each calendar year. The evidence of assessment work or the notice of intention to hold the mining claim must be filed both in the office where the notice of location of the claim is recorded and in the proper office of the Bureau of Land Management. This requirement is mandatory, not discretionary. Filing of evidence of assessment work only in the county recording office does not constitute compliance with the recordation requirements of the Federal Land Policy and Management Act of 1976 or those in 43 CFR 3833.2-1.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences.

APPEARANCES: Cliff Sasselli, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

By decision of May 27, 1983, the California State Office, Bureau of Land Management (BLM), declared the unpatented Sierra Steve placer mining claim, CA MC 58076, abandoned and void because no proof of labor or notice of intention to hold the claim for 1982 was filed with BLM by December 30, 1982, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

Appellant states that he was preparing to file the proof of labor on December 27, 1982, but a heavy snow storm on December 27 buried his truck under several feet of snow. On December 31, he skied 15 miles to the nearest town and mailed the proof of labor to BLM. He thought he had until the last day of the month to mail the proof of labor, confusing the recent change in regulations that allowed mailing of the proof of labor by December 30 as being the end of the month. The 1982 proof of labor was received by BLM January 3, 1983. Appellant states that his plan of operation has been approved by the United States Forest Service, and that he has posted an appropriate performance bond.

[1] Section 314 of FLPMA requires the owner of an unpatented mining claim located on Federal land to file in the county where the location notice is of record and in the proper office of BLM, on or before December 30 of each calendar year, a proof of labor evidencing performance of assessment work on the claim or a notice of intention to hold the claim. The statute also provides that failure to file such instruments within the prescribed time periods shall be deemed conclusively to constitute an abandonment of the claim. As no proof of labor or notice of intention to hold the claim for 1982 was timely filed with BLM, BLM properly deemed the claim to be abandoned. J & B Mining Co., 65 IBLA 335 (1982); Margaret E. Peterson, 55 IBLA 136 (1981). The responsibility for complying with the recordation requirement of FLPMA rests with the owner of the unpatented mining claim. When it enacted FLPMA, Congress gave neither BLM nor this Board authority to excuse lack of compliance, or to extend the time for compliance, or to afford any relief from the statutory consequences, no matter how compelling the circumstances might be. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

[2] The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), is imposed by the statute itself, and would operate without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute or to afford claimants any relief from the statutory consequences. Lynn Keith, *supra* at 196, 88 I.D. 371-72.

The regulations define "file" to mean "being received and date stamped by the proper BLM office." 43 CFR 1821.2-2(f); 43 CFR 3833.1-2(a). Filing is accomplished only when a document is delivered to and received by the proper BLM office. The filing requirement is imposed by statute, and this Board has no authority to waive it. Lynn Keith, *supra*.

BLM stated that it did not receive the 1982 proof of labor until January 3, 1983. Appellant states that he mailed the proof of labor on December 31, 1982. Therefore, it must be found that BLM was not acting improperly in its decision declaring the claim abandoned and void, under the terms of FLPMA.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

R. W. Mullen
Administrative Judge

